

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

DR 2000-006858

05/22/2003

HON. STEVEN D. SHELDON

CLERK OF THE COURT
S. Morris
Deputy

FILED: 06/02/2003

IN RE THE MATTER OF
JULIE ANN MOODY

LAWRENCE K LYNDE

AND

PATRICK JOSEPH FLANAGAN

VICTOR A GARNICE

CONCILIATION SERVICES-CCC
EXPEDITED SERVICES-CCC
SUPPORT SERVICES-CCC

MINUTE ENTRY

This matter came on for hearing pursuant to Petitioner's request for modification of custody. Prior to the hearing, a Family Evaluator from Conciliation Services had the opportunity to interview the parties' child, Shelby, and reported on the information gathered during her interview with the child.

The Court notes that the testimony thereafter presented during the hearing did not, to any substantial degree, contradict the information apparently provided by the child to the Conciliation Services' Family Evaluator.

Mother testified that she currently resides in Tucson, is married, and has two other children residing with her. Her current husband is employed, and she works at a local school and testifies that Shelby would not have to incur any daycare but, apparently, would be with her at the school. She is earning \$8.61 per hour and health insurance would be provided for Shelby through her husband's employment. She currently has visitation every other weekend and two weeks during the summer, as well as holiday vacation visitation. The Court was disappointed to learn that Mother had been required to provide all transportation to and from Tucson for all visitation. Father has apparently never shared in the transportation.

THE COURT FINDS credible Mother's testimony that she has, on numerous occasions, found Father drinking when she has returned the child to the Phoenix area after visitation and
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has, on several occasions, found him in "a drunken stupor." She testified that, on those occasions, he had slurred speech, could not walk, and it was apparent to her that he was intoxicated. She also testified that eight out of ten times, when she has returned Shelby from weekend visitation, that "he's either been drinking or is drunk." She also testified that, consistent with the child's statements to the Family Evaluator, although it had been some period of time since she had been in Father's home, when she had been, it was not picked up. She also noted that the child smelled like smoke when she picked her up and that her clothes often were unkempt and smelly.

The Court was concerned that the record reflected that Respondent had been arrested, charged and convicted of an aggravated assault offense which indisputably involved Respondent being intoxicated at the time of the events for which he was convicted. The Court also finds it remarkable that the lower court, which placed defendant on probation, made alcohol counseling "optional" if the defendant otherwise complied with the terms of his probation, which apparently only required that he pay restitution. The Court was also very concerned that Respondent's own testimony corroborated much of what was presented by Petitioner. Respondent testified, when asked whether he drinks, "Yes, most days." He also stated, with respect to questions regarding the tidiness and cleanliness of his home, that "We're not the cleanest." He conceded that the home was in disarray, but he did not believe it was "dirty." He also conceded that he was arrested for aggravated assault, handcuffed and taken from the scene, and that his daughter, Shelby, arrived to see this conduct. Respondent, also when asked whether he had received help for any alcohol problem, stated "It's not a problem."

The Court is concerned that alcohol use appears to be a substantial problem for Respondent, that he fails to recognize it, and has failed to take any steps to either diagnose or treat it.

Respondent also conceded that he had discussions with Petitioner about changing custody in the fall of 2002. He stated that he had been working quite a bit and that he discussed with Petitioner that it might be appropriate for Shelby to stay with her mother. Although Respondent denied that he took Shelby for counseling because she missed her mother, the Court finds that the exhibits and testimony contradict such a position by Respondent.

THE COURT FINDS credible Mother's testimony that, in fact, Father had told Mother that Shelby could move to Tucson and reside with her and, after Shelby had been advised of this, Father unilaterally and inexplicably changed his mind causing substantial emotional discomfort to the child.

THE COURT ALSO FINDS that Shelby apparently spontaneously, as the Family Evaluator noted, on three occasions indicated a desire to live with her mother.

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After considering the testimony presented at the hearing in this matter, the Court has concluded that, considering the factors in A.R.S. 25-403, it is clearly in the child's best interest to reside with Mother as primary residential custodian. Therefore,

IT IS ORDERED affirming joint legal custody of Shelby with her parents and awarding Mother primary residential custodian status.

IT IS FURTHER ORDERED that, given Father's substantial use of alcohol, it could clearly endanger Shelby to require him to do the transportation for visitation. Therefore,

IT IS ORDERED referring this matter to Expedited Services for computation of child support and directing that an additional adjustment upward for visitation be made in the amount of \$100 per month, in addition to the child support otherwise calculated, to compensate and reimburse Mother for costs of transportation involved in insuring that Shelby continues to have visitation with Father.

IT IS FURTHER ORDERED that the parties comply with all instructions and directives of Expedited Services.

IT IS FURTHER ORDERED stopping child support from Petitioner to Respondent. Further Court orders regarding child support are to await recommendations from Expedited Services and orders of the Court.

FILED: Exhibit Worksheet.